90-1751

Supreme Court, U.S.
FILED
MAR 20 1991
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

OCTOBER TERM, 1991

FELIX SANTONI ROIG, ET AL,
PETITIONERS

v.

IBERIA LINEAS AEREAS DE ESPAÑA,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Secretary of Labor and Human Resources of Puerto Rico intervened as a party in interest when he filed a motion assuming representation of plaintiffs in the case before the United States District Court for the District of Puerto Rico, and if he was a party in interest when he answered interrogatories propounded by defendant to plaintiffs without any objection ever raised by defendant.

2. Whether the United States District Court for the District of Puerto Rico, neglected to include the Secretary of Labor and Human Resources of the Commonwealth of Puerto Rico, as an Intervenor, in the caption of the case after he filed a motion for representation in the same; and if the United States Court of Appeals was misled toward an error concluding, erroneously, that the Secretary was not an intervenor in this case.

3. Whether the United States Court of Appeals assumed the prerrogatives and the powers of the Legislature of the Commonwealth of Puerto Rico by adding a new role to the Secretary of Labor and Human Resources of Puerto Rico (merely as legal representative or counsel) when such role, alone, is not contained within the pertinent statutory provisions, and it was utilized as the reason for dismissing the case, prejudicing petitioners and discriminating against the Secretary of Labor and Human Resources of Puerto Rico.

4. Whether the United States District Court for the District of Puerto Rico, and, later, the United States Court of Appeals for the First Circuit, ilegally validated

the stipulations, waivers and releases, signed by employees (petitioners) and not approved by the Secretary of Labor and Human Resources of Puerto Rico, which are clearly against the labor statutes of Puerto Rico, and in complete disregard for the local statutes and public policy of the Commonwealth of Puerto Rico, ignoring the "law of the land" and abusing their discretion.

5. Whether the Notice of Appeal, dated September 4, 1990, before the United States Court of Appeals for the First Circuit was a valid and sufficient Notice of Appeal, filed on time; and, therefore, the United States Court of Appeals for the First Circuit had jurisdiction to entertain and to consider the appeal filed by the Secretary of Labor and Human Resources of Puerto Rico for the benefit and in representation of the plaintiffs, as an intervenor, pursuant to the "law of the land."

LIST OF ALL PARTIES

1. Plaintiffs - Appellants (Petitioners):

Félix Santoni Roig
Eduardo Bidot
Arturo Reza
José Arango
Jorge A. Ferré
Alejandro Lorenzo
Lucienne Toti
John Mc Cormick
Ramón Alers
Efraín Iriarte
Fernando Portela
Enrique Martínez
Elizabeth Estrada
Carlos Pena Jacinto
Rafael Covas
Jaime Fortuño

2. Intervenor (Petitioner):

Ruy N. Delgado Zayas, Secretary of Labor and Human Resources for the Commonwealth of Puerto Rico.

3. Defendant-Appellee (Respondent):

Iberia Líneas Aéreas De España

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Ruy N. Delgado Zayas, Secretary of Labor and Human Resources of the Commonwealth of Puerto Rico, in representation and for the benefit of the petitioners, who are named in the Complaint, in the instant case, and specified in this Petition; and having intervened in the case pursuant to the local statutes of the Commonwealth of Puerto Rico, respectfully prays that a writ of certiorari be issued to review the Order of Court of the United States Court of Appeals for the First Circuit, entered on December 20, 1990. A Notice of Appeal, dated September 4, 1990, had been filed in the case. Appendix A, *infra*, p. 1a.

ORDERS OF COURT

1. An Order of Court was entered on September 27, 1990, by the United States Court of Appeals for the First Circuit, stating that it appears that the Court may not have jurisdiction. Appendix B, *infra*, p. 3a. A new Notice of Appeal was filed pursuant to such order. Appendix C, *infra*, p. 5a.

2. A second Order of Court was entered on November 2, 1990, by the United States Court of Appeals for the First Circuit, ordering appellants either to move for voluntary dismissal or to show cause why the appeal should not be dismissed. Plaintiffs/Appellants filed a motion in response to the orders of the Court. Appendix D, *infra*, p. 8a, and Appendix E, *infra*, p. 9a.

3. The third Order of Court, which dismissed cases No. 90-1928 and No. 90-2061, was entered by the United States Court of Appeals for the First Circuit on December 20, 1990. The Court stated that the Secretary of Labor and Human Resources of Puerto Rico may be entitled to intervene as a party-in-interest but he neglected to do so. The Court further said that the Secretary merely assumed legal representation of the plaintiffs' case and that he could not appear before the Court as a party on appeal. The Court further concluded that, as to Félix Santoni Roig, the plaintiff named in the timely notice of appeal, the appeal had to be dismissed. Appendix F, *infra*, p. 13a. It is mentioned that the Secretary, in the proposed pretrial order, filed on July 24, 1990 (before a hearing held July 26, 1990, in which Santoni Roig disclosed details unknown until then by the Secretary), stipulated that the settlement with the defendant constitutes a full and final settlement of all claims. The Court said the Secretary belatedly challenges

the validity of the proposed pretrial order, which himself signed and which stipulated away Santoni's claim (signed before the hearing of July 26, 1990, in which Santoni appeared with Attorney Richard Lee and disclosed many details not clear, until then, to the Secretary; and where Santoni provided some documents with a Sworn Statement). Appendix G, *infra*, p. 16a. The Court concluded that the appeal of Mr. Santoni must, also, be dismissed. Appendix F, *infra*, p. 13a.

JURISDICTION

Iberia Líneas Aéreas de España falls within the definition of an agency or instrumentality of a foreign state (Spain) within the meaning of 28 United States Code, Section 1603(b)(2). Appendix H, *infra*, p. 21a.

ORDER OF COURT TO BE REVIEWED

It is respectfully requested that this Court review the Order of Court entered December 20, 1990, by the United States Court of Appeals for the First Circuit. Appendix F, *infra,* p. 13a.

JURISDICTION TO REVIEW BY WRIT OF CERTIORARI

The jurisdiction of this Court is invoked under 28 United States Code Section 1254(l).

STATUTES INVOLVED

Act No. 96 of June 26, 1956, as amended; 29 Laws of Puerto Rico Annotated, Section 246:

Injunction and other proceedings

It shall be the duty of the Secretary of Labor and

> Human Resources, personally or through his duly authorized agents, to enforce section 245 et seq. of this title [Minimum Wage Law] and all the decrees, orders rules and regulations promulgated hereunder. To this end, whenever, in his opinion, any employer is violating or contemplates to violate any provisions of section 245 et seq. of this title; or has done or is about to do any act prohibited by section 245 et seq. of this title, or by a decree, order, rule or regulation; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect, or refuse to perform any duty imposed on him by section 245 et seq. of this title, or by a decree, order, rule or regulation, the Secretary of Labor and Human Resources may institute injunction or any proceedings that may be necessary effectively to enforce the provisions of section 245 et seq. of this title and the decrees, orders, rules or regulations promulgated hereunder. The Superior Court shall have authority to hear and decide all the aforesaid actions.

Act No. 96 of June 26, 1956, as amended; 29 Laws of Puerto Rico Annotated, Section 246b:

Claims by employees

> (a) Any laborer or employee who receives a lower compensation than that fixed in section 245 et seq. [Minimum Wage Law] of this title or in a mandatory decree, order to regulation of the Minimum Wage Board or in a collective bargaining agreement or an individual work contract shall be entitled to recover through a civil action the unpaid difference up to the total amount of the compensation to which he is entitled for wages, vacation, sick leave or any other benefit, plus an amount equal to the unpaid amount as additional compensation, besides the costs, expenses, interest and attorney's fees for the proceedings . . .

(b) The claims which several or all the workers or employees may have against a common employer for work done in the same establishment, enterprise, or place, may be joined in a single action.

* * * *

(f) In connection with the enforcement of section 245 et seq. [Minimum Wage Law] of this title or of any mandatory decree, order or regulation of the Board, the Secretary of Labor and Human Resources may demand, motu proprio or at the instance of one or more laborers or employees having an interest in the matter, and in representation and for the benefit of one or more such laborers or employees who are in a similar position, payment of any sum owned to them for wages, additional compensation, interest, costs, expenses, and attorney's fees to which subsection (a) of this section refers. In every action so instituted by the Secretary of Labor and Human Resources, any laborer or employee having an interest in the matter may act as plaintiff.

(g) The Secretary of Labor and Human Resources may act as plaintiff or intervenor in every judicial action or proceeding instituted by any person in connection with the application of section 245 et seq. of this title or of a decree, order or regulation of the Board.

Act No. 96 of June 26, 1956, as amended,; 29 Laws of Puerto Rico Annotated, Section 282:

Claims of employees; damages; compromise, intervention of mediators

Any employee who receives a compensation less than that fixed by sections 271-288 of this title for regular hours and extra hours of work, or for the period fixed for meals, shall be entitled to recover from his

employer, through civil action, the sums unpaid, plus an equal sum as liquidation of damages, in addition to the costs, expenses, and attorney's fees of the proceeding.

* * * *

The judicial claim may be filed by one or several employees, in his or their names, and that of other employees who are in similar circumstances; Provided, That after the claim has been judicially instituted, it may be settled by the parties with the intervention of the Secretary of Labor and Human Resources or any of the attorneys of the Department of Labor and Human Resources appointed by said Secretary and the approval of the court. The Secretary of Labor and Human Resources shall determine administratively which judicial or extrajudicial settlement shall require his personal intervention, establishing the criteria which shall prevail to such ends, through regulations or administrative order. Every extrajudicial settlement in regard to the payment of the wages for regular hours, extra hours of work, the time specified to partake of food, or the payment of the sum equal to that claimed which sections 271-288 of this title fix as liquidation of damages, shall be null; Provided, however, That for the purposes of sections 271-288 of this title, a settlement made before the Secretary of Labor and Human Resources or before any of the attorneys or officials of the Department of Labor and Human Resources, appointed by said Secretary shall be valid.

Act No. 2 of October 17, 1961, as amended; 32 Laws of Puerto Rico Annotated; Section 3118:

Filing of complaint; parties; jurisdiction

Whenever a workman or employee should have to

claim from his employer any equity or benefit, or any sum on account of compensation for work or labor done for said employer, or for compensation in case said workman or employee should have been discharged from his work without just cause, he may choose to appear before the Part of the District Court or of the Superior Court, as the case may be, of the place where the work was done, or where said workman or employee resides on the date of the claim, and file a complaint against the employer, which complaint shall be made out or filled in, as the case may be, by the Judge, or the Clerk of the court, in which the workman or employee shall set forth the facts upon which the claim is grounded.

In the exercise of any action that may be brought under the procedure established by sections 3118-3132 of this title, the Secretary of Labor and Human Resources may sue, motu proprio or at the instance of one or more workmen or employees having an interest in the matter, and on behalf and in representation of one or more of such workers or employees who are in similar circumstances, and he may also turn himself into the complainant or intervener in any claim initiated under the procedure established in sections 3118-3132 of this title.

* * * *

The complaint may include the claims of all workmen and employees of the same employer who failed to receive their equities, benefits, or wages earned on the same work; Provided, That the filing of a complaint by one or more workmen or employees, or by the Secretary of Labor and Human Resources on their behalf, shall not preclude the filing of other actions by, or on behalf of other workmen or employees.

Act No. 379 of May 15, 1948, as amended; 29 Laws of Puerto Rico Annotated, Section 282:

> Any employee who receives a compensation less than that fixed by sections 271-288 of this title for regular hours and extra hours of work shall be entitled to recover from his employer, through civil action, the sums unpaid, plus an equal sum as liquidation of damages, in addition to the costs, expenses, and attorney's fees of the proceeding.
>
> These claims may be handled in accordance with the regular procedure, or the complaint procedure established in Act No. 10 of Nov. 14, 1917, as heretofore or hereafter amended.
>
> The judicial claim may be filed by one or several employees, in his or their names, and that of other employees who are in similar circumstances; Provided, That after the claim has been judicially instituted, it may be settled by compromise between the parties with the intervention of the Secretary of Labor and the approval of the court.
>
> Every extra judicial compromise in regard to the payment of the wages for regular hours, extra hours of work, or the payment of the sum equal to that claimed which sections 271-288 of this title fixes as liquidation of damages, shall be null; Provided, however, That for the purposes of sections 271-288 of this title a compromise made before the Secretary of Labor or any of the attorneys of the Department of Labor, appointed by said Secretary, shall be valid.

Act No. 80 of May 30, 1976, as amended; 29 Laws of Puerto Rico Annotated 185i:

Right to compensation unwaiveable; nullities

> The rignt of an employee who is discharged from his employment without just cause, to receive the compensation provided in section 185a of this title, is

hereby declared to be unwaiveable.

Any contract or part thereof in which the employee waives the compensation to which he is entitled to, pursuant to sections 185a-185l of this title, shall be null and void.

STATEMENT OF THE CASE

The case which originated this proceeding was originally filed in the local courts of the Commonwealth of Puerto Rico, particularly in the Superior Court, San Juan, Part. It was alleged that Defendant owed plaintiffs the amount of nine hundred thousand dollars for vacations, severance pay (unjust discharge) extra hours (overtime), hours of rest (meal period) and hours not compensated (back wages). Reference is made to Appendix I, *infra*, p. 22a (translation). The case was later removed to the United States District Court, for the District of Puerto Rico, and the motion for Removal was granted by Order, dated June 26, 1985, in which the Court concluded that "Iberia" falls within the definition of an agency or instrumentality of a foreign state within the meaning of 28 U.S.C. Section 1603(b)(2). Appendix H, *infra*, p. 21a. The complaint was later amended with respect to the amount of compensation requested by the plaintiffs.

The case is a civil action in which employees (petitioners) requested compensation from respondent based on the Labor Statutes of Puerto Rico. Respondent, Iberia Líneas Aéreas de España, hereinafter "Iberia", is a carrier by air within the meaning of Section 201 of the Railway Labor Act (45 U.S.C. 181) and is subject to the provisions of such statute. The Labor Union, International Association of Machinists, hereinafter "IAM", was the labor representative, under the Railway Labor Act, of the

employees (petitioners), in the United States and in Puerto Rico. Petitioners are no longer represented by "IAM" and they do not belong to "IAM" since April of 1985. Nevertheless, the United States District Court for the District of Puerto Rico ordered that petitioners had to arbitrate their claims. Appendix J, *infra*, p. 24a (Judgment).

Iberia and the IAM were parties to a collective bargaining agreement subject to change in accordance with the procedures of the Railway Labor Act, covering the rates of pay, rules and working conditions. On March 29, 1985, Iberia and the IAM reached an Agreement by which Iberia had the right to contract out all or any part of the work at the airports. Any employee whose employment with Iberia was terminated because his work was contracted out (such as petitioners) was eligible to receive severance pay in an amount to be computed based on a formula stated in the agreement, as well as other benefits. Petitioners were terminated as a result of the agreement beginning on March 30, 1985. They had been represented by IAM, until such date. Petitioners no longer belong to IAM. None of the petitioners presented any grievance in accordance with the provisions of the Collective Bargaining Agreement over the alleged failure to pay the amounts claimed in the Complaint, which is based on local statutes.

Iberia contended that Petitioners' discharge was a "minor dispute" which, under the provisions of the Railway Labor Act, had to be resolved by way of arbitration and that such dispute was preempted by the federal statute. Petitioners contended that the claims asserted in the complaint were based on "independent statutory

rights" rather than disputes over conditions which appear exclusively in an agreement. Petitioners were seeking relief pursuant to Puerto Rico Labor Laws with respect to dismissal without just cause, minimum wages (including vacations) and overtime. Those were rights that arose not from the agreeement itself, but from independent statutes designed to provide minimum substantive guarantees to individual workers; they were substantive rights secured by statutes, which could be lost if allowed to be vindicated solely by arbitration because it would be incumbent upon the union to assert them. (It should be remembered that Petitioners are no longer members of the IAM, since 1985, and it is very doubtful that they have a "standing" to appear before the System Board of Adjustment, at this time, or that they may be fairly represented, now, by the IAM in an arbitration proceeding.)

The Honorable Raymond L. Acosta, United States District Judge, concluded that, as a matter of law, the Puerto Rico Labor Statutes were not preempted by federal legislation (Railway Labor Act) and that a Motion for Summary Judgment filed by Iberia should be denied (Opinion and Order, dated June 20, 1988). *Félix Santoni Roig, et al* v. *Iberia Líneas Aéreas de España*, 688 F. Supp. 810 (D.P.R. 1988).

Two years later, the Honorable José Antonio Fusté, United States District Judge, issued another Opinion and Order (and a Judgment)[1] dated August 3, 1990, by which he "revoked" Judge Acosta's Judgment, and concluded, by way of reconsideration, that there is no genuine issue of material fact serving as an obstacle for the granting of

[1] Not published yet. Such Judgment, Opinion and Order, are contained within the files of the case.

summary judgment. Judge Fusté remanded the claims by plaintiffs (petitioners) to arbitration or dispute resolution under the mechanisms provided by the collective bargaining agreement and the Railway Labor Act (five years after Petitioners were no longer members of IAM). He concluded that the Union participated protecting the employees' rights under the applicable federal law and the collective bargaining agreement. But Petitioners' contention is that their rights were violated under the labor statutes of Puerto Rico. It is not the interpretation or application of the Agreement what is involved. Nevertheless Judge Fusté dismissed the complaint for lack of jurisdiction and concluded that the case had to be arbitrated as provided by the collective bargaining agreement and the Railway Labor Act. Appendix J, *infra*, p. 24a.

The Secretary of Labor and Human Resources of Puerto Rico then appealed from Judge Fusté's Judgment. The caption of the case in the "Notice of Appeal" reads: Félix Santoni Roig, et al, plaintiffs vs. Iberia Líneas Aéreas De España, Defendant. It is clear from the body of the Notice of Appeal that the Secretary of Labor appealed to the U.S. Court of Appeals for the First Circuit and that the Secretary is an intervenor and a real party in interest. Appendix A, *infra*, p. 1a. The cases at the Court of Appeals (two notices of appeal) were dismissed for lack of jurisdiction. Appendix F, *infra*, p. 13a.

REASONS FOR GRANTING THE WRIT

This is a case in which Petitioners are no longer members of a labor union and nevertheless the U.S. District Court concluded that the case must be arbitrated.

Petitioners do not have a chance to assert their rights through arbitration any longer. The Secretary of Labor and Human Resources filed a motion for representation of Petitioners. It is always interpreted in Puerto Rico that such representation is an "intervention" for the benefit of employees and that the Secretary becomes the real party in interest. The Court of Appeals ignored such interpretation of the local statutes of Puerto Rico, the "law of the land." If the writ of certiorari is not granted, petitioners will not have a chance to assert their rights in Court.

A close look at the local statutes reflects that the Secretary may act only in two ways: as plaintiff or as intervenor. Reference is made to 29 Laws of Puerto Rico Annotated, Section 246 b(g) and 32 Laws of Puerto Rico Annotated, Section 3118. Once the Secretary files a motion for representation of employees, it is normally understood in the local courts, under local statutes, that the Secretary appears as an intervenor. There is not any other role for the Secretary of Labor and Human Resources under the local statutes relevant to this matter. It should be examined if the Court of Appeals for the First Circuit abused its discretion when it concluded that the Secretary was only a legal representative and, therefore, was not an intervenor in the case.

The reason why the Secretary of Labor and Human Resources does not appear in the caption of the case, as intervenor, is because such amendment was never taken care of by the United States District Court for the District of Puerto Rico. The caption was never amended and the legal action of plaintiffs has been prejudiced. We have not changed the caption because we have to be faithful to the manner in which it still appears in the lower courts. No

order has been issued to alter the caption of the case. The Secretary must be considered an intervenor and a public official, acting in the public interest. Reference is made to *Mitchell* v. *Richey*, 164 Federal Supplement 419.

The Secretary may act as plaintiff or intervenor in every judicial action or proceeding instituted by any person. When the Secretary files a motion for representation of employees, it is understood that the Secretary acts for the benefit of all employees similarly affected by violations of the statutes and, therefore, the Secretary is acting as plaintiff or intervenor and he is the real party in interest. He is seeking the general welfare and representing the public interest.

The Secretary of Labor and Human Resources of Puerto Rico, representing the public interest of Puerto Rico, appealed to the U.S. Court of Appeals for the First Circuit, to enforce public statutes. The alleged violations committed by the employer are violations against Public Law and, nevertheless, the Court of Appeals decided the case based upon criteria which should be only applicable to "private parties" where a private contract is involved. Clarification is required as to the difference of a public figure, litigating public statutes, representing the public interest and trying to enforce public law, versus private parties litigating private contracts.

There are different interpretations related to the issue of preemption by the Railway Labor Act; and related to the issue of "independent cause of action," as well as "minor dispute." Such issues may be clarified, eventually, by this Honorable Court, in this case. Those are issues of importance.

In a particular case, a party brought suit in his individual

capacity and on his children's behalf, with the Notice of Appeal naming only the father. The Notice of Appeal was sufficient to provide the court with jurisdiction over the children's appeal. See: *King* v. *Otasco, Inc.*, 861 F2d 438 (5th Cir 1988). It should be clarified why in the instant case, the First Circuit should or should not interpret that the Secretary of Labor of Puerto Rico can appeal, as an intervenor, on behalf of employees, although all the employees are not named in the caption of the case.

A clarification may be necessary as to the kind of "intervention" required by the Federal Rules of Civil Procedure or Appellate Procedure and the kind of "intervention" allowed by the local statutes of Puerto Rico, and case law of the Island, with respect to the Secretary of Labor and Human Resources.

The legality of the stipulations and agreements signed by employees with Iberia, and not authorized or approved by the Secretary of Labor and Human Resources, is another important issue of the case. The lower courts disregarded the statutory provisions, of the local statutes, in that regard; and approved such waivers or releases signed by the employees. Reference is made to 29 Laws of Puerto Rico Annotated 282 and 29 Laws of Puerto Rico Annotated 185i. Those waivers or releases are absolutely illegal as a matter of law. In addition, from the point of view of a contractual relationship, there are very serious doubts as to the legality of them, since their inception. Apparently, they are lacking in the requisite of "meeting of the minds." Such stipulations can be invalidated. More than that, they are invalid, null and void, since their inception. The reasoning of the United States Court of Appeals for the First Circuit as to plaintiff, Félix Santoni

Roig, may not be valid at all. Mr. Santoni Roig appeared at a hearing on July 26, 1990, represented by an attorney, challenging the validity of his stipulations and waivers with Iberia. He raised many details and issues until then unknown to the Secretary of Labor and Human Resources of Puerto Rico. Appendix G, *infra*, p. 16a, or that had been misunderstood.

Another question still remains. If the Secretary of Labor and Human Resources was not an intervenor in the case, why then was it accepted by the Respondent (Iberia) that he answered the interrogatories in substitution of some employees such as Eduardo Bidot? Appendix K, *infra*, p. 25a, as an example. Why after five years of acting as an "intervenor," the U.S. Court of Appeals for the First Circuit concluded that the Secretary of Labor of Puerto Rico is not a real party in interest in this matter and that he is not an appellant representing plaintiffs (petitioners)? Such interpretation will affect the rights of petitioners. In addition, the role applied to the Secretary, solely as legal representative (counsel) is not contained within the local statutes. A tremendous damage will be inflicted to the rights of employees in Puerto Rico if such interpretation is allowed to stand. Every employer who can remove a case, will be seeking the most convenient forum without any respect to comply with local statutes in Puerto Rico. Copies of motions related to the representation of plaintiffs are included. See Appendix L, *infra*, p. 31a and Appendix M, *infra*, p. 34a. In any event, the interpretation of the Court has been seriously inconsistent with the "law of the land" in this aspect.

ARGUMENT AND AUTHORITIES

In this type of cases, such as the instant case, the "law of the land" should be applied by the federal courts, which include the applicable statutory provisions, as well as the case-law.

It is a well-settled doctrine in Puerto Rico that in cases involving labor matters, under local statutes, such as violations of the minimum wage and overtime statutory provisions, the only adverse party is the Secretary of Labor and Human Resources; and that the main thing is to guarantee the public interest in the compliance with the minimum wage standards and other working conditions necessary for the economy and the general welfare. See: *Sierra, Secretary of Labor* v. *Superior Court*, 81 Puerto Rico Reports 540 (1959).

In the case referred-to-above (*Sierra* v. *Superior Court, Supra*) the Supreme Court of Puerto Rico expressed the following, at page 552:

> "The Secretary of Labor appeared in court as plaintiff in this litigation 'in representation and for the benefit' of the 16 workmen mentioned in the complaint. His power to act in their behalf issued from Sec. 25 of the Minimum Wage Act of 1941, as amended, 29 L.P.R.A. Sec. 236. It said: 'In connection with the enforcement of this chapter or of any mandatory decree, the Secretary of Labor may demand on his own initiative or at the instance of one or more laborers or employees having an interest in the matter, and in representation and for the benefit of one or more thereof who are in similar position, payment of any sum owed to them for the wages, additional penalty, costs, expenses, and attorney's fees . . .' The language used in Sec. 30(f) of the Minimum Wage Act as now drafted is identical.

> Therefore, there is no need for any authorization or consent from the workmen who could profit if the suit succeeded. The validity of the representation assumed by the Secretary of Labor relies solely on a statutory provision, *the appearance* of the persons for whose benefit the claim is made, being unnecessary. Furthermore: if the claim filed by the Secretary of Labor on behalf of a workman is meritorious, it should be sustained even if the workman appears at the trial as a witness of the defendant employer and there declares (1) that his employer does not owe him anything, and (2) that he never authorized the Secretary to include him as a claimant in the case."

The Supreme Court of Puerto Rico further expressed, at the *Sierra* case (*supra*), at page 553:

> ". . . as to the procedural steps to follow, the only adverse party is the Secretary of Labor, who by operation of Law appears in court as plaintiff to claim what the employer owes. This situation is an inevitable result of the public policy governing matters of wages. We are not simply trying to protect the individual rights that the workmen may have under the social legislation. The main thing is to guarantee the public interest in the compliance with the minimum wage standards and other working conditions necessary for the economy and the general welfare . . . Therefore, the 16 workmen in the case at bar cannot be considered as 'adverse parties' to the defendant in the action brought by the Secretary to recover the payment of the compensation owed to them for minimum wages, vacations, and liquidated damages."

At the federal level, it is a well-settled doctrine that the Secretary of Labor is the real party in interest in cases

under the Fair Labor Standards Act[2], for violations of minimum wage, overtime and other violations, where he represents employees, and that the Secretary of Labor appears on behalf of employees and in their representation. It was the opinion of the Court in the case *Mitchell* v. *Richey*, 164 Federal Supplement 419, that the real party in interest was the Secretary of Labor under the Fair Labor Standards Act; and that the only interest represented was the public interest in that the action was under the control of the Government and was brought by the Secretary of Labor, in his official capacity as a federal official, for the benefit of the United States and for the purpose of enforcing the Fair Labor Standards Act. The Local Statutes of Puerto Rico related to minimum wage and overtime are similar in many respects to the Fair Labor Standards Act and all those statutes are in pari-materia. The Secretary of Labor and Human Resources of Puerto Rico participates in cases, in his official capacity, as an officer of Government, for the benefit of Puerto Rico and to enforce public statutes.

Other cases of interest, which are pertinent to the instant case and reflect that the Secretary of Labor of the United States appears in cases as representative of employees, and for their benefit, and that he is the only party in interest in such cases, where he intervenes or represents employees, are the following: *James P. Mitchell, Secretary of Labor* v. *Floyd Pappin & Son Incorporated*, 27 Labor Cases 69,045; *Maurice J. Tobin, Secretary of Labor* v. *Carl F. Wilson*, 19 Labor Cases 66,307; and *James P. Mitchell, Secretary of Labor* v.

[2] 52 Stat. 1060 et seq; 29 U.S.C. 201 et seq.

Tampa Cigar Company, Inc., 36 Labor Cases 65,198.

In the case *James P. Mitchell, Secretary of Labor* v. *Floyd, Pappin & Son, Incorporated,* 27 Labor Cases 69,045, an employer's motion for a summary judgment, in an action under the Fair Labor Standards Act, on the grounds that the employee was not named as a party plaintiff in the caption of the complaint, as required by the act, and that the suit was barred by a two-year statute of limitations, was dismissed when the court ruled that the Secretary of Labor was the real party in interest in this type of action. The Court ruled that under the fair Labor Standards Act every proceeding and step in the course of the action is conducted and controlled by the "Administrator" and there is nothing in the language of the Act to indicate that there is any joint control of the Administrator and the employee.

In the case *King* v. *Otasco, Inc.*, 861 F2d 438 (5th Cir. 1988), where a father brought suit in his individual capacity, and on his children's behalf, the notice of appeal naming only the father, provided the court with jurisdiction over the children's appeal.

It is the Secretary's position that the first Notice of Appeal, dated September 4, 1990, is a valid and sufficient Notice of Appeal and that the same should not be dismissed. (Docket No. 90-1928). Such Notice of Appeal was filed on time and the Secretary of Labor and Human Resources of Puerto Rico appeared in representation of the employees included in the Complaint, and such appearance was in accordance with the "law of the land" which was disregarded by the United States Court of Appeals for the First Circuit. The Secretary has been an intervenor for at least five years in this proceeding.

Labor statutes are remedial statutes and they should be liberally construed. *Martínez Reyes* v. *Superior Court*, 104 P.R.R. 407 (1975); *Secretary of Labor* v. *I.T.T. Western Hemisphere Directories*, 108 P.R.R. 536 (1979); *Guaynabo Municipality* vs. *Superior Court*, 97 P.R.R. 545 (1969); *Sánchez* v. *Best Price*, 102 P.R.R. 379 (1974) (from Spanish texts some citations) and *Phillips Inc.* v. *Walling*, 324 U.S. 490 (1945).

In the interest of Justice, and based on the case law, and in the "law of the land," discussed above, in which it is clear that the Secretary of Labor and Human Resources appeared and "intervened" on behalf of plaintiffs, who are named in the Complaint, becoming the real party in interest in the case; and considering that the stipulation and release signed by Félix Santoni Roig and others, without the approval of the Secretary of Labor and Human Resources, and lacking the "meeting of the minds," are null, void and illegal; it is respectfully submitted that the first Notice of Appeal filed in the case is a valid and sufficient Notice of Appeal, and that the United States Court of Appeals for the First Circuit, should have assumed jurisdiction with respect to such Notice of Appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWIN A. HERNANDEZ

Attorney for Petitioners and for the
Secretary of Labor and Human Resources of Puerto Rico
Bureau of Legal Affairs

Department of Labor and Human Resources of Puerto Rico
505 Muñoz Rivera Ave.
Hato Rey, Puerto Rico 00918
Tel. (809) 754-5367

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, Et Al., Plaintiffs Vs. IBERIA LINEAS AEREAS DE ESPAÑA Defendant	CIVIL NO. 85-1078 (JAF)

NOTICE OF APPEAL

TO THE HONORABLE COURT:

Come now plaintiffs, represented by the Secretary of Labor and Human Resources of Puerto Rico, through the undersigned attorneys, and very respectfully state and pray:

1. Notice is hereby given that the Secretary of Labor and Human Resources of Puerto Rico, in representation of plaintiffs, hereby appeals to the United States Court of Appeals for the First Circuit, from the Judgment entered in the instant case dated August 3, 1990, by which the Honorable Court remanded the instant case to arbitration and dismissed the complaint filed herein for lack of jurisdiction.

2. It is plaintiffs' position that the Honorable Court erroneously remanded the case to be Arbitrated under a collective bargaining agreement and the Railway Labor Act, when the Court had to apply the local statutes of

Puerto Rico pertinent to the issues in the case.

WHEREFORE, the appearing party respectfully requests that the clerk of this Honorable Court be ordered to proceed with the appeal in the instant case.

The subscribing attorney certifies that on this same date and by regular mail, copies of the foregoing Notice of Appeal have been mailed to Miguel Palou Sabater, Esq., Palou & Miranda, Banco de Ponce Building, Suite 1103, Hato Rey, Puerto Rico 00918; and to Richard A. Lee, Esq. at Richard A. Lee Law Office, g.p.o. Box 3068, San Juan, Puerto Rico 00936-3068.

Respectfully submitted, in San Juan, Puerto Rico, this 4th day of September, 1990.

EDWIN HERNANDEZ RODRIGUEZ
USDC NO. 115702
For the Secretary of Labor
and Human Resources
Prudencio Rivera Martínez Bldg.
505 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
Tel. (809) 754-5367

By: Edwin Hernández Rodríguez
Attorney

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 90-1928

FELIX SANTONI ROIG, ET AL.,
Plaintiffs, Appellants,

v.

IBERIA LINEAS AEREAS DE ESPAÑA,
Defendant, Appellee.

ORDER OF COURT

Entered September 27, 1990

Upon review of the record in this case, it appears that this court may not have jurisdiction to consider the appeal of any appellant other than Félix Santoni Roig because the body of the notice of appeal does not name the plaintiffs/appellants and the caption names only Félix Santoni Roig. See *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312 (1988); *Kaiser* v. *Armstrong World Industries, Inc.*, 872 F. 2d 512 (1st Cir. 1989); *González Vega* v. *Hernández Colón*, 866 F. 2d 519 (1st Cir. 1989), *Santos-Martínez* v. *Soto-Santiago*, 863 F. 2d 174, 175 (1st Cir. 1988) (a court of appeals lacks power to hear an appeal from a party who is not specified in the notice of appeal; "et. al." does not sufficiently identify an appellant). Absent response to this order by October 12, 1990, the notice of appeal will be deemed to be valid only as to Félix Santoni Roig. Any new

notice of appeal listing all the plaintiffs or motion to extend the time for filing a new notice of appeal should be filed promptly in the district court.

By the Court:

Francis P. Scigliano
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, EDUARDO BIDOT, ABRAHAM ZACOUR, RAFAEL MORILLO, JOHN MC CORMICK, JAIME FORTUÑO, FERNANDO PORTELA, JOSE ARANGO, ELIZABETH ESTRADA, JOSE A. LOPEZ, JOSE HOYOS, EDUARDO BLASQUEZ, ANA ALVAREZ, RAFAEL COVAS, ANGEL O. SANTIAGO, JORGE LOPEZ, LUCIENTE TOTTI, JORGE FERRE, EFRAIN IRIARTE, VICTOR VERGARA, RAMON ALERS, LUIS SUAREZ, CARLOS PENA, RONALD F. BOOI, ARTURO RESA, FELIX MUÑOZ, PABLO PEREZ, VICENTE ALOS, ENRIQUE MARTINEZ Y ALEJANDRO LORENZO Plaintiffs Vs. IBERIA LINEAS AEREAS DE ESPAÑA Defendant	CIVIL NO. 85-1078 (JAF)

NEW NOTICE OF APPEAL

TO THE HONORABLE COURT:

Come now plaintiffs, represented by the Secretary of Labor and Human Resources of Puerto Rico, through the

undersigned attorneys, and very respectfully state and pray:

1. Notice is hereby given that the Secretary of Labor and Human Resources of Puerto Rico, in representation of plaintiffs, hereby appeals to the United States Court of Appeals for the First Circuit, from the Judgment entered in the instant case dated August 3, 1990, by which the Honorable Court remanded the instant case to arbitration and dismissed the complaint filed herein for lack of jurisdiction.

2. It is plaintiff's position that the Honorable Court erroneously remanded the case to be Arbitrated under a collective bargaining agreement and the Railway Labor Act, when the Court had to apply the local statutes of Puerto Rico pertinent to the issues in the case.

3. Plaintiffs seek relief, in the instant case, pursuant to Puerto Rico labor laws which provide for claims based on dismissal without just cause, minimum wages and overtime work. It is plaintiffs' position that state law claims' are not preempted by federal statutes; and that there are genuine and material issues of fact that can only be resolved after a full trial in the instant case. In addition, plaintiffs are not estopped from requesting back wages, overtime and other compensation for unjust discharge under local statutes.

4. The controversies are not "minor disputes" to be resolved by way of arbitration. The controversies refer to violations of public statutes of Puerto Rico. The controversies did not arise from interpretation or application of agreements concerning rates of pay, rules or working conditions. The complaint is based on independent statutory

rights; and so long as plaintiffs allege to be entitled to relief provided by a legal source other than the collective bargaining agreement, the claims are not preempted by the Railway Labor Act.

WHEREFORE, the appearing party respectfully requests that the Clerk of this Honorable Court be ordered to proceed with the appeal in the instant case and that the Honorable Court of Appeals eventually revoke the Judgment of August 3, 1990, referred to above.

The subscribing attorney certifies that on this same date and by certificate mail, copies of the foregoing Notice of Appeal have been mailed to Miguel Palou Sabater, Esq., Palou & Miranda, Banco de Ponce Building, Suite 1103, Hato Rey, Puerto Rico 00918; and to Richard A. Lee, Esq. at Richard A. Lee Law Office, G.P.O. Box 3068, San Juan, Puerto Rico 00936-3068.

Respectfully submitted, in San Juan, Puerto Rico, this 8th day of October, 1990.

EDWIN HERNANDEZ RODRIGUEZ
USDC NO. 115702
For The Secretary Of Labor
And Human Resources
Prudencio Rivera Martínez Bldg.
505 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
Tel. (809) 754-5367

By: Edwin Hernández Rodríguez
Attorney

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 90-2061

FELIX SANTONI ROIG, ET AL.,
Plaintiffs, Appellants,

v.

IBERIA LINEAS AEREAS DE ESPAÑA,
Defendant, Appellee.

ORDER OF COURT

Entered November 2, 1990

Upon review of the record in this case, it appears that this court may not have jurisdiction to consider the appeal because the notice of appeal filed on October 10, 1990 appealing from the judgment docketed on August 9, 1990 is late. *See* Fed. R. App. P. 4(a)(1) (30 days for appeal).

The appellant is ordered to either move for voluntary dismissal under Rule 42(b) F.R.A.P. or to show cause why this appeal should not be dismissed. The failure to take either action by November 6, 1990 may lead to dismissal for failure to prosecute.

By the Court:

FRANCIS P. SCIGLIANO, Clerk

By: Daniel F. Loughry
Chief Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

FELIX SANTONI ROIG,
Et Al.
Plaintiffs-Appellants

Vs.

IBERIA LINEAS AEREAS
DE ESPAÑA

Defendant-Appellee

DOCKET NO. 90-1928
DOCKET NO. 90-2061

PLAINTIFFS' MOTION IN RESPONSE TO ORDER OF COURT ENTERED SEPTEMBER 27 AND NOVEMBER 2, 1990; AND IN OPPOSITION TO DISMISSAL OF APPEAL

TO THE HONORABLE COURT:

Comes now the Secretary of Labor and Human Resources of Puerto Rico, Ruy N. Delgado Zayas, in representation and for the benefit of plaintiffs in the above-styled matter; and the plaintiffs, represented by the aforesaid Secretary of Labor and Human Resources, and through the undersigned attorney, very respectfully state and pray before this Honorable Court:

1. The Notice Of Appeal, dated September 4, 1990, in the instant case (Docket No. 90-1928) was a valid and sufficient one and the same was filed on-time. Therefore, the New Notice Of Appeal (the second one) filed on

October 10, 1990, should be considered only as an amendment to the first Notice Of Appeal. Both are valid notices and both may be consolidated into one proceeding (Reference is also made to Docket No. 90-2061).

2. It is clear from both notices, referred-to-above, that the Secretary of Labor and Human Resources of Puerto Rico appeared in representation and for the benefit of plaintiffs in the instant proceeding, (Dockets 90-1928 and 90-2061).

3. It is the "law of the land" that in cases which involve violations of minimum wage and overtime the only adverse party, and the real party in interest, is the Secretary of Labor and Human Resources of Puerto Rico.

4. It is also a well-settled doctrine under the Fair Labor Standards Act that the Secretary of Labor may appear on behalf and for the benefit of employees. An analogy may be established in this aspect with the local statutes of Puerto Rico. The real party in interest is the Secretary of Labor.

5. There is a case that may be used as an analogy, at the level of the Court of Appeals, (5th Circuit), which provides a guideline for situations of appellants that appear in a representative capacity. Reference is made to *King* V. *Otasco, Inc.*, 861 F2d 438 (5th Cir. 1988) where a father brought a suit in his individual capacity and on his children's behalf. The Notice of Appeal, naming only the father, provided the court with jurisdiction over the children's appeal.

6. It is the Secretary's position that the New Notice of Appeal was the "response" filed before October 12, 1990,

pursuant to the Order of this Honorable Court. Such New Notice of Appeal seems to have been unnecessary because the first Notice of Appeal was valid, sufficient and was filed on time. The second one was filed due to the order of September 27, 1990.

7. Defendant's Motion to Dismiss the Appeal only intends that this Honorable Court sits as a District Court to solve numerous facts which are still in issue in the case. The standing of Félix Santoni Roig still needs clarification. It appears that there was not a "meeting of the minds" with respect to his stipulation; and the validity of the same, since its inception, is an issue in the case. Other settlements or stipulations are not so clear, and others have not been honored by Iberia. See Exhibit No. 1, which is a copy of a Stipulation for Partial Voluntary Dismissal, related to Efraín Iriarte as an example of a stipulation among others, not honored by Iberia. The same situation applies to Ramón Alers, Jaime Fortuño and John McCormick, in addition to Efraín Iriarte. See also a copy of a sworn statement, as Exhibit No. 2, by Félix Santoni Roig, which appears within the documents in the files of the case. Defendant's Motion ignores the fact that under the law the Secretary of Labor and Human Resources may represent the plaintiffs and may appear in a representative capacity even on appeal. This case is not a private suit, among private parties, since the Secretary entered and intervened to represent the plaintiffs-appellants. Defendant still insists in ignoring the difference.

WHEREFORE, in the interest of justice and based on the "law of the land", it is respectfully requested that the

Notices of Appeal be considered as valid, sufficients and on-time; that defendant's motion to dismiss be considered as not meritorious; and that an order be entered to the effect that this Honorable Court has appellate jurisdiction in this matter.

Respectfully submitted in San Juan, Puerto Rico, this 14th day of November, 1990.

Certificate of Service: I hereby certify that a true copy of appellants' Motion In Response To Order Of Court Entered September 27 and November 2, 1990; And In Opposition To Dismissal Of Appeal was served by mail upon defendant's attorneys Edward Brill, Esq., Proskaver, Rose, Goetz & Mendelsohn, 300 Park Avenue, New York, N.Y. 10022; Miguel Palou Sabater, Esq., Suite 1103, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, and upon Attorney Richard A. Lee, Esq., Richard A. Lee Law Office, G.P.O. Box 3068, San Juan, Puerto Rico 00936-3068.

EDWIN A. HERNANDEZ RODRIGUEZ
USDC NO. 115702, Tel. (809) 754-5367
Attorney for the Secretary of Labor
and Human Resources of Puerto Rico,
and for the Plaintiffs-Appellants
Bureau of Legal Affairs
Department of Labor and Human Resources
505 Muñoz Rivera Ave., Hato Rey, P.R. 00918

By: Edwin A. Hernández Rodríguez

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 90-1928
No. 90-2061

FELIX SANTONI ROIG, ET AL.,
Plaintiffs, Appellants,

v.

IBERIA LINEAS AEREAS DE ESPAÑA,
Defendant, Appellee.

Before

Campbell, Selya and Cyr,
Circuit Judges.

ORDER OF COURT

Entered December 20, 1990

The Secretary of Labor and Human Resources of the Commonwealth of Puerto Rico may be entitled to intervene as a party-in-interest under Puerto Rico law, but he neglected to do so in this case. Instead, the Secretary merely assumed legal representation of the plaintiffs' case. Therefore, he may not come before this court as a party on appeal. Consequently, except as to Félix Santoni Roig, the

one plaintiff named in the only timely notice of appeal, No. 90-1928 and No. 90-2061 are dismissed for lack of jurisdiction. *Torres* v. *Oakland Scavenger Co.*, 108 S. Ct. 2405 (1988); *Rosario-Torres* v. *Hernández-Colón*, 889 F. 2d 314 (1st Cir. 1989) (en banc).

We also conclude that the appeal of Mr. Santoni must be dismissed. On May 17, 1990, the district court denied a motion to reinstate Mr. Santoni as a plaintiff. Thereafter, the Secretary, in the proposed pretrial order, filed on July 24, 1990, stipulated that the settlement with the defendant "constitutes a full and final settlement of all claims."

The only timely appeal filed by the Secretary does not purport to appeal from the May 17, 1990 denial of reinstatement or from the final judgment generally, but only from the district court's August 3, 1990 judgment remanding this case to arbitration. Mr. Santoni was no longer a party by that time.

We see no timely indication of any intent to appeal from the denial of the motion to reinstate Santoni. In the Plaintiff's Motion in Opposition to Dismissal of Appeal, the Secretary belatedly challenges the validity of the proposed pretrial order, the order which himself signed and which stipulated away Santoni's claim. An appeal which is enlarged as a matter of substance is a new appeal. *Spound* v. *Mohasco Industries, Inc.*, 534 F. 2d 404, 410 (1st Cir. 1976). The Secretary raised this issue well after the 30-day period following judgment in which notice of appeal may be filed, and thus we lack jurisdiction to decide this issue. Fed. R. App. P. 4(a)(5); *Torres*, 108 S. Ct. at 2407-09; *Spound*, 534 F. 2d at 410; 9 *Moore's Federal Practice*, 203.17[2] at 3-84 to 3-87. The appeal of Mr. Santoni must, therefore, also be dismissed.

Appeals dismissed.

By the Court:

FRANCIS P. SCIGLIANO, CLERK

By: Daniel F. Loughry
Chief Deputy Clerk

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, et al Plaintiffs v. IBERIA, Líneas Aéreas de España Defendant	Civil No. 85-1078 (JAF)

***** TRANSLATION *****

SWORN STATEMENT

The undersigned, FELIX SANTONI ROIG, of legal age, single, pensionee and resident of Utuado, Puerto Rico, under the most solemn oath, DECLARES as follows:

1. That my name and personal circumstances are as above stated.

2. From November 17, 1969 to March 30, 1985 I was an employee of defendant.

3. I am one of the plaintiffs in the present case.

4. Towards the end of May 1986, Miguel A. Cabrera, Esquire, requested permission from the Court to withdraw as counsel for plaintiffs. After a hearing held on May 21, 1986, wherein I and other plaintiffs testified, the Court relieved Attorney Cabrera from my representation in said case. The order required that I as well as those plaintiffs that wished to procure a different legal representation

would have until June 16, 1986 to do so.

5. Plaintiffs found themselves profoundly worried by the fact that Cabrera wanted to withdraw from the case and by the very short time they would have to obtain new legal representation. For that reason, we divided the undertaking to obtain new legal representation. Some would try to procure the representation of the Department of Labor and others would do the same in the private sector.

6. I got the law firm of Vázquez Vizcarrondo Alvarez Angelet & González (Vázquez Vizcarrondo) to appear before June 16, 1986, at the least on my behalf to keep the case alive, while the written authorization from the rest of the plaintiffs was obtained or, while the Department of Labor determined if they would appear or not on behalf of plaintiffs.

7. Eventually the Department of Labor appeared assuming the representation of some 16 plaintiffs, including myself.

8. Once represented by the Department of Labor I advised Carlos T. González Contreras, Esq. of the law firm of Vázquez Vizcarrondo of said appearance. Therefore, I did not need the representation of Vázquez Vizcarrondo in the case, but I asked Attorney González to help me in relation with the severance pay for dismissal that was pending, and in a claim that I had under the grievance procedures pursuant to the provisions of the collective bargaining agreement related to a claim for reimbursement of medical expenses, in the amount of some $6,000.00.

9. Then Attorney González filed a motion before the

Federal Court limiting his appearance to the issue of severance pay due to dismissal, leaving the Department of Labor as my legal representative in relation to the rest of the case. I did not have knowledge of this motion until a short time ago.

10. My interest was that Attorney González would advise me in respect to the release that Iberia was requiring that I sign as a condition for delivering the corresponding check for severance pay; so as not to impair my rights in the case against Iberia, in the same way that the rights of the other plaintiffs were not impaired. I had no objection as to the amount of the payment offered because it seemed to fit with the provisions of the collective bargaining agreement.

11. Aware that I owed Vázquez Vizcarrondo for their participation to keep the case alive while the Department of Labor assumed the representation of plaintiffs, and for their counselling in respect to the release over the severance pay for dismissal, I indicated to Attorney González to settle the claim that I had under the grievance procedures regarding the reimbursement of medical expenses in an amount sufficient to satisfy this fees.

12. Attorney González settled the medical claim for $1,000.00 and following his instructions I signed, by way of release, a letter addressed to Attorney González by Attorney Palou, at the offices of Miguel Palou Sabater, Esquire, in the absence of Attorney González. At the moment of signing I told Attorney Palou that by said release I had no intention to prejudice or renounce my claims in Case 85-1078 as I had at all times told Attorney

González.

13. From the amount of $1,000.00 I paid Vázquez Vizcarrondo $960.00, on the understanding that their services to me had ended.

14. I never authorized Vázquez Vizcarrondo or any other person to settle my claims in the present case.

15. It was not until on or about July 18, 1990 that I became aware that on August 26, 1986 Vázquez Vizcarrondo subscribed and authorized the filing of a stipulation by which I was out of the case.

16. In fact, I attended a meeting called by the attorneys for Iberia to consider a possible settlement of the case, at which almost all plaintiffs were present, and which I believe was held in November 1988 at the Offices of Attorney Palou at Banco de Ponce. I participated actively with no objection from anyone. After the meeting ended, and already in the lobby of the Banco de Ponce, Attorney Acevedo from the Department of Labor told me that I had to clarify my status in the case because it was not clear who was representing me or if I was still in the case. Following the suggestions of the Department of Labor, on several occasions I asked Vázquez Vizcarrondo to accredit in the record of the case that their services to me had ended.

17. At my request the Department of Labor tried to clarify my situation with the Court in January 1989 but I now find that they were not successful.

18. At no time have I renounced or settled my claims, as these appear in the amended complaint in this case. On the contrary, at all times I have understood that I am a plaintiff in the case represented by the Department of

Labor and as such, I have fulfilled all my obligations such that, in due time, my claim is adjudicated.

IN WITNESS HEREOF, I sign the present statement for all legal purposes, on this July 23, 1990.

(Signed) Félix Santoni Roig
FELIX SANTONI ROIG

AFFIDAVIT NO. 7,623

Sworn and subscribed before me by Félix Santoni Roig, of the personal circumstances stated above, to me personally known. In San Juan, Puerto Rico, on July 23, 1990.

There appears the notarial stamp
of the subscribing notary

(Signed) Jorge M. Suro
NOTARY PUBLIC

BMS/dc
797-00
D/6/79700.402C

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, et al.,
Plaintiffs,

v.

IBERIA, LINEAS AEREAS DE ESPAÑA
Defendant

Civil No.
85-1078 (RLA)

ORDER

It appearing defendant Iberia falls within the definition of an agency or instrumentality of a foreign state within the meaning of 28 U.S.C. § 1603(b)(2), since the majority of its shares are owned by the Spanish Government or a political subdivision thereof, and that removal of this action is proper pursuant to the provisions of 28 U.S.C. § 1441(d), plaintiff's motion opposing removal filed on June 4, 1985 is hereby denied.

Iberia will file its answer to the complaint on or before July 19, 1985.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 26 day of June, 1985.

JAIME PIERAS, JR.
United States District Judge

APPENDIX I

IN THE COURT OF FIRST INSTANCE
SUPERIOR COURT
SAN JUAN PART

FELIX SANTONI ROIG, EDUARDO BIDOT, ABRAHAM ZACOUR, RAFAEL MORILLO, JOHN MC CORMICK, JAIME FORTUÑO, FERNANDO PORTELA, JOSE ARANGO, ELIZABETH ESTRADA, JOSE A. LOPEZ, JOSE HOYOS, EDUARDO BLAZQUEZ, ANA ALVAREZ, RAFAEL COVAS, ANGEL O. SANTIAGO, JORGE LOPEZ, LUCIENNE TOTTI, JORGE FERRE, EFRAIN IRIARTE, VICTOR VERGARA, RAMON ALERS, LUIS SUAREZ, CARLOS PENA, RONALD F. BOOI, Complainants Vs. IBERIA LINEAS AEREAS DE ESPAÑA Defendant	CIVIL NO. PE 85-397 (1001) FOR: CLAIM FOR WAGES

COMPLAINT

TO THE HONORABLE COURT:

NOW COME Complainants, represented by the undersigned attorney and respectfully state, allege and pray:

1. That Defendant discharged complainants on March 30, 1985.

2. That Defendant owes complainants the total

amount of Nine Hundred Thousand (900000) Dollars in concept of vacations, severance pay, extra hours, of rest, the compensation ordered by law, and hours not compensated.

3. Complainants resorts to the summary proceedings provided by law for the collection of salaries.

WHEREFORE, respectfully it is requested from this Honorable Court grant the present Complaint and enter judgment condemning defendant to the payment of the debt to complainants plus interests, costs expenses and attorneys fees.

In San Juan, P.R., on this 18th. day of April, 1985.

By: Miguel A. Cabrera (Sgd.)
Parque Street No. 352
Stop 23
Santurce, P.R. 00912

APPENDIX J

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, et al.,
Plaintiffs,

v.

IBERIA LINEAS AEREAS DE ESPAÑA,
Defendant

Civil No. RLA 85-1078 (JAF)

JUDGMENT

Pursuant to an Opinion and Order entered by the court today a judgment is hereby entered remanding the case to arbitration and dismissing the complaint filed herein.

San Juan, Puerto Rico, this 3rd. day of August, 1990.

JOSE ANTONIO FUSTE
U.S. District Judge

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, Et Al. Plaintiffs Vs. IBERIA LINEAS AEREAS DE ESPAÑA Defendant	CIVIL NO. 85-1078 RLA

ANSWER TO INTERROGATORIES

TO : DEFENDANT

FROM : JUAN M. RIVERA GONZALEZ, Secretary of Labor and Human Resources of Puerto Rico, in representation of Eduardo Bidot, Plaintiff

A. Vacation Pay:
   1. $10,421.40
   2. January 1975 to December 30, 1984
   3. Based upon the last salary paid per year.
   4. No payment was made for vacation pay.

B. Severance Pay:
   5. $8,592.36
   6. Monthly salary plus one week of salary per year of service.
   7. Yes, a payment was made and was called "severance pay".
      a. $13,228.80
      b. Yes.

C. Extra Hours:

8. 3,800 extra hours, since January 1975 up to and 1984.
9. $48,336.00
10. Last salary paid multiplied by the regular rate; multiplication of extra hours by last regular salary per hour.

D. Hours of Rest:

11. $40,704.00
12. 3,200 hours, since January 1975 up to and including December 30, 1984.
13. Multiplication of 3,200 hours by the regular hourly salary.

E. Hours not compensated:

14. 70 hours worked but not compensated. Such hours were worked before 1975 and the payment or compensation of them was withheld by Defendant and carried-over from pay-period to pay-period. The amount not compensated is $890.40.
15. Based on the last hourly salary paid. Two weeks had been accrued and not paid by Defendant and those two weeks became as the last salary not paid.
16. See answer to Interrogatory No. 15.

F. Claim for Compensation Provided by Law:

17. Local Statutes:

Act No. 379 of May 15, 1948, as amended (29 L.P.R.A 271 et seq.)

Act No. 96 of June 26, 1956, as amended (29 L.P.R.A. 245 et seq.)

Act No. 80 of May 30, 1976, as amended

(29 L.P.R.A. 185a et seq.)
Act No. 2 of October 17, 1961, as amended
(32 L.P.R.A. 3118 et seq.)
Civil Code of Puerto Rico (31 L.P.R.A.)

18. $108,944.16
19. Notes and recollections of Plaintiff during the years worked; and adding the sums related to vacation, severance pay, extra hours, hours of rest and hours worked but not compensated.
20. It was not submitted to the Grievance Procedure because it is not based on the Collective Bargaining Agreement.

G. Claims Alleged in the Complaint:

21. None on the claims was submitted to the Grievance Procedure because none is based on the Collective Bargaining Agreement.
22. Eduardo Bidot
Address:

Félix Calderón Ocasio
Address: J-199 Guatemala Street, Forest View
Bayamón, Puerto Rico 00619

Part of this interrogatory is beyond the scope permitted by Rule 26(b)(1) of the Federal Rules of Civil Procedure, insofar as it requests the name of trial witnesses and a description of their expected testimony. Rule 26(b)(1) only allows discovery of the identity and location of persons with knowledge of the facts, but not of the names and testimony of trial witnesses.

23. Please see list of each person that has knowledge

of the facts attached as Exhibit "A" of this answer to Interrogatories.

24. Computation sheets and summaries prepared from Defendant's records.

    Such documents include computation sheets and summaries of hours and wages prepared by the Labor Technician, Félix Calderón Ocasio, and include summaries of differences in accordance with applicable local statutes.

25. No.

26. (a) See answer to Interrogatory No. 25.
    (b) See answer to Interrogatory No. 25.
    (c) See answer to Interrogatory No. 25.

27. The date that a complaint was filed at the Superior Court in Puerto Rico, approximately on or about April 18, 1985.

28. None.

29. That information is contained within the documents and records of Defendant. Plaintiff does not have record of all benefits received and of monetary value of such benefits throughout the years.

30. Yes, Félix Calderón Ocasio
    Labor Technician
    Address: J-199 Guatemala Street, Forest View
    Bayamón, Puerto Rico 00619
    Area of Expertise: Auditing of payroll records, investigation of compliance with labor statutes and regulations.

31. None; although reference is made to answer to

Interrogatory No. 24. In San Juan, Puerto Rico, on this 23 day of September 1986.

Juan M. Rivera González
Secretary of Labor and Human
Resources of Puerto Rico

SWORN STATEMENT

I, Juan M. Rivera González, of legal age, married, Secretary of Labor and Human Resources of Puerto Rico and resident of Bayamón, Puerto Rico, under oath depose and say:

1. That my name and personal circumstances are those expressed above.

2. That the preceding answers which have been formulated as answers to the Interrogatories propounded by Defendant, in the pertinent parts and aspects, are a true and exact description and account of what has been declared by plaintiff, Eduardo Bidot—, in the instant case, and based on reports of investigations performed by agents of the Department of Labor and Human Resources of Puerto Rico.

In San Juan, Puerto Rico, this 23 day of September, 1986.

Juan M. Rivera González
Secretary of Labor and Human
Resources of Puerto Rico

AFFIDAVIT NO. 277

Sworn and subscribed before me by Juan M. Rivera González, of the personal circumstances stated above, personally known to me.

In San Juan, Puerto Rico, this 23 day of September, 1986.

Miguel A. Santiago Arroyo
Notary Public

I HEREBY CERTIFY, that on this date, 26th of September, 1986, I have sent a true and exact copy of the foregoing answer to Interrogatories to Miguel Palou Sabater, Esq., at Ledesma, Palou & Miranda, Banco de Ponce Building, Suite 1103, Hato Rey, Puerto Rico 00918.

EDWIN A. HERNANDEZ RODRIGUEZ, ESQ.
ALBERTO ACEVEDO COLOM, ESQ.
Attorneys of the Bureau of Legal
Affairs for the Department of Labor
and Human Resources
Prudencio Rivera Martínez Bldg.
505 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
Tel. (809) 754-5358

By: Edwin A. Hernández Rodríguez

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, Et Als.,
Plaintiffs

Vs.

IBERIA LINEAS AEREAS DE ESPAÑA
Defendant

CIVIL NO.
85-1078 (RLA)

MOTION TO ASSUME LEGAL REPRESENTATION

TO THE HONORABLE COURT

Comes now the Secretary of Labor and Human Resources of Puerto Rico, Juan M. Rivera González, represented by the undersigned attorneys and respectfully prays as follows:

1. That this Honorable Court entered an Order dated May 28, 1986, by which attorney Miguel A. Cabrera was relieved from representing Félix Santoni Roig in the above-styled manner.

2. That this Honorable Court further ordered that Mr. Santoni Roig shall appear through new counsel on or before June 16, 1986; and that any of the remaining plaintiffs wishing to change counsel shall also appear through new legal representation on or before June 16, 1986.

3. That the Department of Labor and Human Resources of Puerto Rico, through the undersigned attorneys, will represent the plaintiffs in the present case if permission is

granted to that effect by this Honorable Court.

4. That plaintiffs by conduct of Félix Santoni, Arturo Resa, José Arango and Eduardo Bidot have requested and authorized the Department of Labor and Human Resources of Puerto Rico, to assume the legal representation of all the plaintiffs in this instant case.

5. That based on the request for legal representation by the plaintiffs above mentioned, and their authorization to that effect, the undersigned attorneys, representing the Secretary of Labor and Human Resources, respectfully request from this Honorable Court permission to represent said plaintiffs in this proceeding effective on June 16, 1986.

WHEREFORE, it is respectfully requested from this Honorable Court, that permission be granted to the undersigned attorneys to assume in the name of the Department of Labor and Human Resources of Puerto Rico, the legal representation of the plaintiffs.

I certify that a true copy of the foregoing Motion has been mailed to Attorney Miguel A. Cabrera, 352 Del Parque Street, Santurce, Puerto Rico 00912; Attorney Miguel Palou, LEDESMA PALOU AND MIRANDA, Office 1103, Banco de Ponce Building, Hato Rey, Puerto Rico 00918; and Attorney Carlos González Contreras, P.O. Box 3059, Hato Rey, Puerto Rico 00919.

In San Juan, Puerto Rico, this 16th day of June 1986.

ALBERTO ACEVEDO COLOM, Esq.
EDWIN A. HERNANDEZ RODRIGUEZ, Esq.
For the Secretary of Labor
and Human Resources of the
Commonwealth of Puerto Rico
Prudencio Rivera Martínez Bldg.
505 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
Phone Number (809) 754-5374
754-5358

By: ALBERTO ACEVEDO COLOM

APPENDIX M

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FELIX SANTONI ROIG, et al., PLAINTIFFS VS. IBERIA LINEAS AEREAS DE ESPAÑA DEFENDANT	CIVIL NO. 85-1078 (RLA)

MOTION

Come now Plaintiffs and the Secretary of Labor and Human Resources of Puerto Rico, through the undersigned attorneys and respectfully inform this Honorable Court and prays as follows:

1. On June 25, 1986, this Honorable Court ordered the Secretary of Labor and Human Resources of Puerto Rico to file a list of each individual plaintiff to be represented by him in the instant case.

2. Pursuant to the aforesaid Order of June 25, 1986, the Secretary of Labor and Human Resources of Puerto Rico informs this Honorable Court that at least *fifteen (15) individuals* have signed a document in which they have, expressly, authorized the Department of Labor and Human Resources to represent them in the instant case. A list containing the name, the signature and the date of authorization, of each individual plaintiff that consented to be represented by the Department of Labor is attached to this Motion as Exhibit "A".

WHEREFORE, it is respectfully requested from this Honorable Court to take into consideration the information provided by the Secretary of Labor and Human Resources of Puerto Rico, in this Motion, in accordance with the Order of June 25, 1986, and that this Honorable Court grants the Secretary's Motion to Assume Legal Representation of the Plaintiffs in the instant case.

Respectfully submitted in San Juan, Puerto Rico, this 30th day of June, 1986.

I certify that a true and exact copy of the foregoing motion has been sent to the attorneys Miguel Palou Sabater, Esq., 1103 Banco de Ponce Bldg., Hato Rey, Puerto Rico 00918; Miguel A. Cabrera, Esq., Del Parque 352, Santurce, Puerto Rico 00912 and Carlos T. González Contreras, Esq., P.O. Box 3059, Hato Rey, Puerto Rico 00919.

ALBERTO ACEVEDO COLOM
EDWIN A. HERNANDEZ RODRIGUEZ
For the Secretary of Labor
and Human Resources of the
Commonwealth of Puerto Rico
Prudencio Rivera Martínez Bldg.
505 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
Tel. (809) 754-5358

By: Edwin A. Hernández Rodríguez

AL DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS:*

Los representantes del grupo de trabajadores, ex-empleados de Iberia Líneas Aéreas de España, reclamantes ante el Tribunal Federal de los Estados Unidos, Corte de Distrito de Puerto Rico, en el caso Civil Núm. 85-1078 autorizamos al Departamento del Trabajo Estatal para que asuma la representación de nuestra Demanda en contra de Iberia Líneas Aéreas de España en la Corte Federal.

En San Juan, Puerto Rico, a 11 de junio de 1986.

ARTURO RESA FELIX SANTONI

JOSE ARANGO EDUARDO BIDOT

---

* To the Department of Labor and Human Resources:

We, the representatives of the group of workers, ex-employees of Iberia Líneas Aéreas de España, plaintiffs before the United States District Court for the District of Puerto Rico, in the Civil Case Number 85-1078, authorize the State Department of Labor to assume the representation of our legal action against Iberia Líneas Aéreas de España in the Federal Court.

In San Juan, Puerto Rico, this 11th day of June, 1986.

Exhibit "A"

AL DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS DE PUERTO RICO:**

Los trabajadores, abajo firmantes, ex-empleados de Iberia Líneas Aéreas de España, reclamante ante el Tribunal Federal de los Estados Unidos, Corte de Distrito de Puerto Rico, en el caso Civil Núm. 85-1078, autorizamos al Departamento del Trabajo y Recursos Humanos de Puerto Rico para que asuma nuestra representación legal en nuestra Demanda en contra de Iberia Líneas Aéreas de España en la Corte Federal, efectivo inmediatamente a la firma de este documento.

Jorge A. Ferré	Fernando Portela
Alejandro Lorenzo	Enrique Martínez
Lucienne Totti	Elizabeth Estrada
John Mc Cormick	Carlos Pena Jacinto
Ramón Alers	Rafael Covas
Efraín Iriarte	Jaime Fortuño

** To the Department of Labor and Human Resources of Puerto Rico:
The laborers, whose signatures appear below, ex-employees of Iberia Líneas Aéreas de España, plaintiffs before the United States District Court for the District of Puerto Rico, in the Civil Case Number 85-1078, authorize the Department of Labor and Human Resources of Puerto Rico to assume our legal representation in our case against Iberia Líneas Aéreas de España in the Federal Court, effective immediately upon the signature of this document.

(2)

No. 90-1751

FILED
JUN 26 1991
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

FELIX SANTONI ROIG, *ET AL.*,

Petitioners,

—v.—

IBERIA LINEAS AEREAS DE ESPANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

EDWARD A. BRILL
(*Counsel of Record*)
PROSKAUER ROSE GOETZ
& MENDELSOHN
1585 Broadway
New York, New York 10036
(212) 969-3000

Attorneys for Respondent

Of Counsel

ANDREW P. MARKS

QUESTIONS PRESENTED

1. Whether the dismissal of the appeal as to all plaintiffs, other than Felix Santoni Roig, was justified because (1) Mr. Santoni was the only plaintiff named in the notice of appeal and (2) the Secretary of Labor and Human Resources of Puerto Rico was not a party to the case because he failed to intervene in the action pursuant to Federal Rule of Civil Procedure 24?

2. Whether the Secretary of Labor and Human Resources of Puerto Rico, notwithstanding his failure to intervene pursuant to Federal Rule of Civil Procedure 24, became a party in this action, as opposed to an attorney representing some of the plaintiffs, when he filed a motion to assume legal representation of some of the plaintiffs after plaintiffs' previous counsel had withdrawn?

3. Whether the dismissal of the appeal by Felix Santoni Roig from the final judgment of the district court was proper because (1) he had filed a stipulation of settlement of his claims nearly four years earlier and (2) a subsequent motion to reinstate him as a plaintiff was denied by the district court and was not appealed?

LIST OF PARTIES

Iberia Lineas Aereas de Espana (Iberia Airlines of Spain) is owned by the National Institute of Industry Council, an entity of the government of Spain. Iberia Lineas Aereas de Espana owns 35% of Aerolineas Argentinas and 30% of Ladeco Airlines.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1751

FELIX SANTONI ROIG, *ET AL.*,

Petitioners,

—v.—

IBERIA LINEAS AEREAS DE ESPANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

This action was commenced by thirty former employees of Iberia Lineas Aereas de Espana ("Iberia") in Puerto Rico whose jobs had been eliminated in 1985 pursuant to an agreement between Iberia and the International Association of Machinists and Aerospace Workers, AFL-CIO, the plaintiffs' statutory bargaining representative under the Railway Labor Act. The agreement gave Iberia the right to contract out work at all airport locations in the United States and Puerto Rico and provided the employees with enhanced severance pay and other benefits in exchange for a general release of claims. Plaintiffs, without the participation or assistance of the Secretary of Labor and Human Resources of Puerto Rico (the "Secretary"), filed this case in the Superior Court of

Puerto Rico, claiming sums were due them under the laws of Puerto Rico for vacation and extra hours (overtime) over a 10 year period, and for dismissal without just cause. Iberia removed the action to the United States District Court for the District of Puerto Rico, pursuant to the removal provisions of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1603(b) and 28 U.S.C. § 1441(d).

All plaintiffs were initially represented by Miguel A. Cabrera, Esq. and Alejandro L. Lorenzo, Esq. During the course of Iberia's efforts to obtain pretrial discovery, Mr. Lorenzo withdrew as plaintiffs' counsel. Shortly thereafter, Mr. Cabrera attempted to withdraw on the grounds that plaintiffs were unable to pay his fees. Although Mr. Lorenzo's withdrawal was approved, the district court granted Mr. Cabrera's motion *only* with respect to plaintiff Felix Santoni. (Mr. Santoni was ordered to appear through new counsel and, on June 12, 1986, Carlos T. Gonzalez Contraras, Esq. began representing Mr. Santoni.) The court's order further stated that "[a]ny remaining plaintiffs wishing to change counsel shall appear through new legal representation on or before June 16, 1986." Mr. Cabrera was directed to "continue representing the remaining plaintiffs until further Order of this Court." (Docket No. 52)[1]

In response to the district court's order, the Secretary filed a "Motion to Assume Legal Representation" requesting "permission to represent" all plaintiffs. (31a; 32a) Iberia opposed the motion on the grounds that "[s]ince the matter does not involve a class action, the Secretary . . . cannot assume the legal representation of plaintiffs in an ensuing lawsuit who have not individually requested same." (Docket No. 57) On June 25, 1986, the district court ruled that it was "not clear from the motion which of the plaintiffs the Secretary is authorized to represent" and ordered the Secretary to submit a "list of each individual plaintiff" he represented.

---

1 References to "Docket No. ___" refer to the documents filed in the district court and recorded on the docket sheet. The petition is cited as "Pet. ___"; "___a" refers to the appendix to the petition.

(Docket No. 59) The list filed by the Secretary by motion on June 30 identified only fifteen plaintiffs that had authorized the Secretary to represent them. (34a) A report by the magistrate of a conference held on July 2, 1986, confirms that "the Secretary of Labor of the Commonwealth of Puerto Rico will represent those plaintiffs appearing in the motion of June 30, 1986. Thus, and pursuant to Judge Acosta's order, all other plaintiffs will continue to be represented by counsel Miguel A. Cabrera." (Docket No. 62)

Although the Secretary now contends that he became a party to the action and not merely an attorney representing the plaintiffs of record, nothing in the motion he filed suggests that he sought to act in such a capacity. To the contrary, the Secretary responded to the court's order by obtaining and filing consents from fifteen of the plaintiffs—not by asserting the statutory right to act on behalf of such persons without their consent. The Secretary did not file a complaint or a motion to intervene as a party as required by Fed. R. Civ. P. 24(c).

On August 28, 1986, the district court dismissed the complaint without prejudice based on plaintiffs' failure to respond adequately to interrogatories served by Iberia.[2] (Docket No. 75) Several months later, the court reconsidered and set aside that order. Iberia thereafter moved for summary judgment, which motion was denied by the court in an opinion dated June 20, 1988. (Docket No. 115) Iberia promptly filed a motion for reconsideration which, although not addressed at that time, was granted on August 3, 1990.

---

2 In anticipation of the dismissal of their claims, some of the plaintiffs, including Mr. Santoni, accepted settlements and entered into stipulations for voluntary dismissal. (Docket No. 73) On January 25, 1989, the Secretary made a "Motion Based on Rule 21 of the Federal Rules of Civil Procedures" to add Mr. Santoni and three other individuals as plaintiffs on the grounds that the stipulations were not valid. Iberia opposed that motion, explaining in detail the reasons why each of the individuals was no longer a plaintiff. On May 16, 1990, the district court signed orders denying the Secretary's motion and granting Iberia's opposition. Those orders made clear that Mr. Santoni and the others were not plaintiffs in the action. (Docket Nos. 143 and 146)

Judgment was entered the same day dismissing the complaint for lack of jurisdiction, and remanding the claims to arbitration. (Docket No. 161)

The Secretary attempted to appeal from that judgment. On September 4, 1990, the Secretary filed the first notice of appeal. (1a) But, contrary to the Federal Rules of Appellate Procedure, the caption of that notice contained only the name of Felix Santoni Roig and used the phrase "et al." to designate the appellants. The body of the notice, moreover, stated only that "[n]otice is hereby given that the Secretary of Labor and Human Resources of Puerto Rico, in representation of plaintiffs, hereby appeals to the United States Court of Appeals for the First Circuit. . . ." Nowhere in the notice were the names of the parties taking the appeal individually listed, as required by Fed. R. App. P. 3(c).

Consequently, on September 27, 1990, the First Circuit, acting *sua sponte*, entered an order that unless the appellant filed a response demonstrating otherwise by October 12, "the notice of appeal will be deemed valid only as to Felix Santoni Roig". The order further stated that any new notice of appeal listing all the plaintiffs or motion to extend the time for filing a new notice of appeal should be promptly filed with the district court. (3a)

The Secretary ignored the court's order and failed to move to extend the time for filing a notice of appeal by October 4, the last date by which such motion could be made under Fed. R. App. P. 4(a)(5). Rather, on October 10, one week *after* the time to request an extension elapsed, the Secretary filed a "New Notice of Appeal." (5a) The "New Notice" listed all 30 plaintiffs in the caption, although the Secretary never represented many of them, and others (including Santoni) had admittedly settled their claims and were no longer plaintiffs. The "New Notice"—like the original—did not list the Secretary as a plaintiff or an intervenor, in its caption or anywhere else.

Iberia moved to dismiss the second appeal on the grounds that it was untimely. It also moved to dimiss the first appeal

on the grounds that it was valid on its face only as to Mr. Santoni, but, since Mr. Santoni was not a party, he had no standing to appeal from the district court's August 3 judgment. On November 2, 1990, the First Circuit issued an order directing "appellant . . . to either move for voluntary dismissal under Rule 42(b) F.R.A.P. or to show cause why this appeal should not be dismissed." (8a) It was only after this order that the Secretary claimed in the court of appeals that the first notice of appeal was sufficient because he was a party to the action.

On December 20, 1990, the court of appeals dismissed the appeals "for lack of jurisdiction", except as to Mr. Santoni, "the one plaintiff named in the only timely notice of appeal." (13a-14a) It found that the Secretary could not come before the court as a party on appeal since he had not intervened as a party but had "merely assumed legal representation of the plaintiffs' case." (13a) Finally, the court dismissed the appeal of Mr. Santoni on the grounds that the notice of appeal purported to appeal only from the August 3, 1990 judgment dismissing the complaint, and Mr. Santoni was no longer a party at that time.

Petitioners request a writ of certiorari to review the order dismissing the appeals.[3]

---

3 Although petitioners discuss the district court's award of summary judgment (Pet. 10-12) and suggest that that decision raises important issues that "may be clarified, eventually, by this Honorable Court, in this case" (Pet. 14), the merits of the district court's decision are not before this Court. Accordingly, Iberia does not respond to the claimed "important issues" that were not presented to the Court of Appeals.

REASONS FOR DENYING THE PETITION

1. The Decision Below Is Consistent with the Decisions of this Court and Does Not Raise an Important Issue of Federal Law.

The decision of the court of appeals to dismiss the appeals involves the simple application of well-settled procedural rules, consistent with decisions of this Court as well as other circuit courts, and does not merit review by this Court.

A. The Court of Appeals had no jurisdiction over the attempted appeal by plaintiffs other than Mr. Santoni.

Rule 3 of the Federal Rules of Appellate Procedure provides that a "notice of appeal shall specify the party or parties taking the appeal . . . ." As this Court made plain in *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312 (1988), Rule 3 creates "jurisdictional requirements" that "may not [be] waive[d] . . . even for 'good cause shown' " 487 U.S. at 317. Thus, the "failure to name a party in a notice of appeal . . . constitutes a failure of that party to appeal." 487 U.S. at 314. The caption of petitioners' only timely notice of appeal did not identify any plaintiff other than Felix Santoni Roig.[4] Although the caption referred to "Felix Santoni Roig, Et Al.", the phrase "et al." is wholly insufficient to specify

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4 Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal "be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from. . . ." "This 30-day time limit is 'mandatory and jurisdictional.' " *Browder* v. *Department of Corrections*, 434 U.S. 257, 264 (1978) (*quoting*, *United States* v. *Robinson*, 361 U.S. 220, 229 (1960)). Appellate courts are "forbid[den] . . . to 'enlarge' the time limits for filing a notice of appeal, which are prescribed in Rule 4." *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312, 315 (1988). An untimely appeal must be dismissed for lack of jurisdiction. *See, e.g.*, *Washington* v. *Bumgarner*, 882 F.2d 899, 900 (4th Cir. 1989), *cert. denied*, 110 S. Ct. 874 (1990). Although petitioners argued below that the "New" notice of appeal should be considered an amendment to the first notice and, therefore, as being timely, the First Circuit implicitly rejected that claim and petitioners do not challenge that decision before this Court.

the party or parties taking the appeal, particularly where, as here, the named plaintiff is not a class representative. 487 U.S. at 318 ("The purpose of the specificity requirement of Rule 3(c) is to provide notice both to the opposition and to the court of the identity of the appellant or appellants. The use of the phrase 'et. al.,' which literally means 'and others,' utterly fails to provide such notice to either intended recipient."). The courts of appeals have strictly applied *Torres* and dismissed appeals of plaintiffs not expressly named in the notice of appeal. *See, e.g., Laidley* v. *McClain*, 914 F.2d 1386, 1388 (10th Cir. 1990); *Birdsong* v. *Wrotenberg*, 901 F.2d 1270, 1273 (5th Cir. 1990); *Cruz* v. *Melendez*, 902 F.2d 232, 235 (3d Cir. 1990); *Minority Employees* v. *Tennessee Dep't of Employment Security*, 901 F.2d 1327 (6th Cir.), *cert. denied*, 111 S. Ct. 210 (1990); *Shatah* v. *Shearson/American Express Inc.*, 873 F.2d 550 (2d Cir. 1989); *Akins* v. *Board of Governors*, 867 F.2d 972 (7th Cir. 1988).

Petitioners assert that the notice of appeal was sufficient to designate the "Secretary of Labor and Human Resources of Puerto Rico, *representing the public interest of Puerto Rico*" as an appellant. (Pet. 14; emphasis added) The notice, however, contained no such designation. To the contrary, the notice expressly stated that the "Secretary of Labor and Human Resources of Puerto Rico, *in representation of plaintiffs*, hereby appeals . . . ." (1a; emphasis added) Thus, the notice conveys the meaning that the Secretary was acting only in a representative capacity and does not constitute an appeal by the Secretary as a party.[5] But even if the notice of appeal could be interpreted as petitioners suggest, dismissal of the

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5 The Second notice of appeal confirms this. The caption of that notice lists all the individual former employees of Iberia as plaintiffs and does not include the Secretary of Labor and Human Resources as a plaintiff. (5a) The body of that notice, moreover, states that "the Secretary of Labor and Human Resources of Puerto Rico, in representation of plaintiffs, hereby appeals . . . ." (6a) If the Secretary intended to appeal in his official capacity, he could have done so simply by stating that the "Secretary of Labor and Human Resources of Puerto Rico, *in his own behalf* and in representation of plaintiffs, hereby appeals."

appeal was proper because the Secretary was not a party to the judgment and, under longstanding authority of this Court, "[o]ne who is not a party to a record and judgment is not entitled to appeal therefrom." *Matter of Leaf Tobacco Bd. of Trade*, 222 U.S. 578, 581 (1911); *accord*, *Marino* v. *Ortiz*, 484 U.S. 301, 304 (1988) ("The rule that only parties to a lawsuit, or those that properly become parties, may appeal is well settled.")

B. The Court of Appeals lacked jurisdiction over the appeal by petitioner Santoni because he was not a party to the judgment appealed from.

The court of appeals correctly held that petitioner Felix Santoni lacked standing to appeal from the district court's August 3, 1990 judgment. Mr. Santoni was not a party of record on August 3, 1990. Nearly four years earlier, in response to a report and recommendation by the Magistrate that Iberia's motion to dismiss the complaint for failure to respond to interrogatories should be granted, Mr. Santoni (together with a number of other plaintiffs) accepted a settlement offer by Iberia and executed a stipulation for voluntary dismissal of his claims. Thereafter, he ceased to be a party to this case although his name remained in the caption because he had been the first-named plaintiff when the action was originally filed. Indeed, on January 25, 1989, the Secretary made a "Motion based on Rule 21 of the Federal Rules of Civil Procedure" to reinstate as plaintiffs Mr. Santoni and three other original plaintiffs who had stipulated to the dismissal of their claims. That motion was denied by the district court on May 16, 1990 (Docket No. 146), making it clear that Mr. Santoni was no longer a party. As discussed above, "[o]ne who is not a party to a record and judgment is not entitled to appeal therefrom." *Matter of Leaf Tobacco Bd. of Trade*, 222 U.S. at 581.

Although the petition raises as a question presented whether the district court and the court of appeals "ilegally [sic] validated the stipulations, waivers and releases, signed by employees (petitioners) and not approved by the Secre-

tary," (Pet. I-II), the facts do not permit formulation, much less require resolution, of that question. First, the "Admitted Facts" section of the Joint Pre-Trial Order, *signed by the Secretary as "Plaintiffs' Attorney"* and submitted to the district court on July 24, 1990, lists the fifteen plaintiffs represented by the Secretary who "still have live claims herein". (Docket No. 156) That list does not include petitioner Santoni. Paragraph 10 of that section, moreover, expressly states that the stipulation of dismissal by Mr. Santoni "constitutes a full and final settlement of all claims alleged in, related to, or arising out of this case."

In any event, no timely appeal was taken from the district court's refusal to reinstate Mr. Santoni as a party, and therefore, the question is not properly before this Court. Fed. R. App. P. 3(c) expressly requires that the notice of appeal "shall designate the judgment, order or part thereof appealed from." As the court of appeals found, the notice filed by the Secretary contains no "indication of any intent to appeal from the denial of the motion to reinstate Mr. Santoni." (14a)[6] Rather, the notice informed Iberia only of the appeal "from the district court's August 3, 1990 judgment remanding this case to arbitration." (14a) The failure to indicate the intention to appeal from the refusal to reinstate Mr. Santoni as a plaintiff deprived the court of appeals of jurisdiction over that claim. *See, e.g., Casella* v. *Webb*, 883 F.2d 805, 807 n.2 (9th Cir. 1989); *Brandt* v. *Schal Associates, Inc.*, 854 F.2d 948 (7th Cir. 1988); *Brookens* v. *White*, 795 F.2d 178 (D.C. Cir. 1986); *Pitney Bowes, Inc.* v. *Mestre*, 701 F.2d 1365 (11th Cir.), *cert. denied*, 464 U.S. 893 (1983); *Elfman*

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6 Not only was the August 3 judgment identified by date in the notice of appeal, but the notice contained an additional paragraph stating the plaintiff's position that the court had "erroneously remanded the case to be Arbitrated under a collective bargaining agreement and the Railway Labor Act, when the Court had to apply the local statutes of Puerto Rico pertinent to the issues in the case." (1a-2a) No mention was made in the notice of the May 16, 1990 order denying the motion to add Santoni as a plaintiff. The scope of the notice was confirmed by the Statement of Issues, which was similarly limited to the August 3 judgment.

Motors, Inc. v. *Chrysler Corp.*, 567 F.2d 1252 (3d Cir. 1977); *Cole* v. *Tuttle*, 540 F.2d 206 (5th Cir. 1976).

2. The Conclusion that the Secretary Did Not Intervene As a Party in the Action Does Not Raise an Important Question of Federal Law.

There is no issue presented here as to whether the Secretary was deprived of the substantive right under the laws of Puerto Rico to intervene as a party to this action. The court below held only that "the Secretary neglected to [intervene] in this case." (13a) That holding was clearly permissible under governing federal law.

Fed. R. Civ. P. 24(c) requires that a "person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." The Secretary took no action whatever to comply with the Federal Rules of Civil Procedure for obtaining status as a party in this action. No motion to intervene was ever served. No pleading setting forth the claim for which intervention was sought was ever filed. Instead, the Secretary became involved in this action by filing a "Motion to Assume Legal Representation" (31a) immediately after the district court had ordered that "plaintiffs wishing to change counsel shall appear through new legal representation on or before June 16, 1986." (Docket No. 52) On this basis alone, the determination that the Secretary did not intervene and, therefore, could not appeal, was appropriate. *See, e.g.*, *Warner Bros., Inc.* v. *Dae Rim Trading, Inc.*, 877 F.2d 1120, 1127 (2d Cir. 1989) ("Absent permitted intervention, Attorney . . . who was not a party to the action below and who was not aggrieved by the district court's judgment, had no right at all to appeal."); *Shevlin* v. *Schewe*, 809 F.2d 447 (7th Cir. 1987) (intervenor failed to file any pleading on a timely basis); *Spangler* v. *Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)

(error for court to conduct proceedings at the request of individuals who have not filed motion to intervene).[7]

The decision in *Bender* v. *Williamsport Area School Dist.*, 475 U.S. 534 (1986), is instructive. In that case, the appellant had participated in the district court action as a member of a school board, but when the school board refused to appeal an adverse decision, appellant attempted to prosecute an appeal in his individual capacity as a parent. In holding that the Court of Appeals was without jurisdiction to hear the appeal, the Court noted:

> Because his status as a parent was obviously different from his official status as a member of the Board, in order to participate as a parent in the District Court litigation it was incumbent upon [appellant] under Rule 24 of the Federal Rules of Civil Procedure to make "timely application" by an appropriate motion "stat[ing] the grounds" for intervention and "setting forth the claim or defense for which intervention is sought." No such pleading was filed in either of the courts below.

Id. at 548 n.9 (citation omitted). Here the Secretary participated in the action before the district court as an attorney representing some of the plaintiffs and initially attempted to file an appeal on that basis. Only when it became clear that the attempted appeal was deficient, did the Secretary claim that he was entitled to appeal in his own right as a party "representing the public interests of Puerto Rico." (Pet. 14) In order to participate in that capacity, however, it was incumbent upon the Secretary to intervene as a party.[8] He never did.

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7 The fact that the Iberia did not object when the Secretary, in September 1986, answered interrogatories on behalf of the plaintiffs does not establish that the Secretary was regarded as a party despite the failure to intervene. To the contrary, the interrogatory answers were not signed by the Secretary as a plaintiff but, rather, were expressly signed, "in representation of Eduardo Bidot, Plaintiff." (25a)

8 The public interest represented by the Secretary and the private interests of employees are not always consistent. *See, e.g., Cosme*

Petitioners contend that the Secretary "intervened in the case pursuant to the local statutes of the Commonwealth of Puerto Rico" (Pet. 1) and that by failing to treat his motion for representation as the equivalent of a motion for intervention, the Court of Appeals "ignored" the local statutes of Puerto Rico, the " 'law of the land.' " (Pet. 13) The simple answer to that contention is that the procedural rules of Puerto Rico do not apply in an action in federal court. In *Hanna* v. *Plummer*, 380 U.S. 460 (1965), an action based on diversity, it was held that federal rather than state procedural law regarding service of process applied even though the application of federal procedure "changed" the outcome of the case in a manner inconsistent with state law.[9] The Court reasoned that "[t]o hold that a Federal Rule of Civil Procedure must cease to function whenever it alters the mode of enforcing state-created rights would be to disembowel either the Constitution's grant of power over federal procedure or Congress' attempt to exercise that power in the Enabling Act." *Id.* at 473-74 (footnote omitted). Like the procedure for service of process at issue in *Hanna* v. *Plummer*, the mechanics of intervention is a matter of procedure which, in an action pending in federal court, is governed by federal law, not state law. *See, e.g., Venegas* v. *Skaggs*, 867 F.2d 527, 530 n.2 (9th Cir. 1989), *aff'd on other grounds*, 110 S. Ct. 1679 (1990); *Olden* v. *Hagerstown Cash Register, Inc.*, 619 F.2d 271, 273-74 (3d Cir. 1980); *McDonald* v. *E.J. Lavino, Co.*, 430 F.2d 1065, 1070 (5th Cir. 1970).[10] Accord-

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Nieves v. *Deshler*, 786 F.2d 445, 452-53 (1st Cir.), *cert. denied*, 479 U.S. 824 (1986) (Secretary supported defendant's claim that Puerto Rico wage laws did not apply to plaintiffs).

9 Service of process had been effected by leaving the summons and complaint with the defendant's wife at his residence, a method permitted by federal law but not state law. 380 U.S. at 461.

10 The fact that this action was initially commenced in state court and removed to federal court by defendant is irrelevant. "The Federal Rules of Civil Procedure, like other provisions of federal law, govern

ingly, with respect to intervention, the "law of the land" is federal law, and even if the Court of Appeals could be said to have "ignored the local statutes of Puerto Rico" regarding intervention, it was required to do so by long standing federal precedent.[11]

The decision in *Hanna* v. *Plummer* also addresses petitioners' claim that if the decision below is allowed to stand, "tremendous damage will be inflicted to the rights of employees in Puerto Rico . . . [because] [e]very employer who can remove a case, will be seeking the most convenient forum without any respect to comply with local statutes in Puerto Rico." (Pet. 16) Here, as in *Hanna* v. *Plummer*, the difference between the state practice (as described by petitioners) and the federal rules is "of scant, if any, relevance to the choice of forum." 380 U.S. at 469. In removing the case to federal court, Iberia was not presented with a situation where application of federal law would have *precluded* intervention by the Secretary; rather, adherence to the federal rule at most merely altered the way in which intervention was to be accomplished. It cannot be argued that altering the mode of intervention affects the substantive rights created by the laws of Puerto Rico.[12]

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the mode of proceedings in federal court after removal." *Granny Goose Foods, Inc.* v. *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70*, 415 U.S. 423, 438 (1974).

11 Petitioners claim that the "reason why the Secretary of Labor and Human Resources does not appear in the caption of the case, as intervenor, is because such amendment was never taken care of by the United States District Court for the District of Puerto Rico." (Pet. 13) Petitioners do not identify the "amendment" to which they refer because there was none. While petitioners assert that they "have not changed the caption because [they] have to be faithful to the manner in which it still appears in the lower courts", (Pet. 13) the fact is that the Secretary is not identified as an intervenor or a plaintiff in the body of the notice of appeal or in the pretrial order prepared and signed by him as "Plaintiffs' Attorney".

12 The asserted "conflict" between federal and state law is, moreover, not readily apparent. The Puerto Rico rule governing intervention

3. Since the First Circuit Did Not Assign a Role to the Secretary that Is Prohibited by the Statutes of Puerto Rico, No Compelling Reason Exists for Granting the Writ.

As has been made evident herein, the First Circuit did not, as petitioners' claim, *add* the role of legal representative or counsel to the Secretary. (Pet. 16) The Secretary assumed that role when he filed a motion to represent some of the plaintiffs in this case in response to the district court's order regarding change of counsel. Nothing in the statutes of Puerto Rico cited by petitioners expressly prohibits the Secretary from acting as a lawyer in an action previously commenced by the employees without the assistance or participation of the Secretary. Accordingly, the interpretation by the First Circuit is not "seriously inconsistent with the 'law of the land. . . .' " (Pet. 16)

The cases discussed at pages 17-20 of the petition are entirely inapposite. Unlike the instant case, they involve situations where the government agency, *acting as a plaintiff*, commenced the action in its own name and thus was a party rather than a lawyer representing the plaintiffs. For example, in *Sierra, Secretary of Labor* v. *Superior Court*, 81 P.R.R. 540 (1959), the court relied on the "essential fact" that the

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(Rule of Civil Procedure of 21.4, P.R. Laws Ann. tit. 32, App. III R 21.4 (1983)), is virtually identical to the Fed. R. Civ. P. 24(c): "A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 67. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." These rules govern "[i]n all cases prosecuted under sections 3118-3132 of this title," the summary procedure under which the complaint herein was apparently filed, "insofar as they are not in conflict with the specific provisions of these sections or with the summary nature of the procedure hereby established". P.R. Laws Ann. tit. 32, § 3120 (1990).

Although petitioners initially assert that "[i]t is *always* interpreted in Puerto Rico that [a motion for] representation is an 'intervention' " (Pet. 13), petitioners subsequently limit that claim to what is "normally understood in the local courts, under local statutes." (Pet. 13) In neither instance do petitioners offer any statutory or case law support for that assertion.

Secretary of Labor actually initiated the proceedings and "appeared in court as plaintiff in this litigation 'in representation and for the benefit' of the 16 workmen mentioned in the complaint." *Id.* at 552. Similarly, the federal cases of *Mitchell, Secretary of Labor* v. *Tampa Cigar Co.*, 36 Lab. Cas. (CCH) ¶ 65,198 (S.D. Fla. 1959), *Mitchell, Secretary of Labor* v. *Floyd Pappin & Son, Inc.*, 122 F. Supp. 755 (D. Mont. 1954), and *Tobin, Secretary of Labor* v. *Carl F. Wilson*, 19 Lab. Cas. (CCH) ¶ 66,307 (N.D. Ill. 1951), each involved actions where the government agency commenced the action.

As the statutes quoted by petitioners state (Pet. 4-8), under the laws of Puerto Rico, both the Secretary and the individual employees could have commenced an action against Iberia.[13] Had the Secretary done so, he would have been a party to this action, listed in the caption and body of the complaint. Only the employees commenced an action, however. The Secretary had authority to intervene in the employees' action, if he chose to do so. But, in federal court (and, most likely, in state court) he was required to file a motion to intervene and a pleading setting forth the claim for which intervention was sought, which he did not do.

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13 Petitioners' claim that "in cases involving labor matters, under local statutes, . . . the only adverse party is the Secretary . . ." (Pet. 17), is flatly contradicted by the local statutes cited by petitioners.

Conclusion

There is no compelling issue of federal law here and no conflict between the First Circuit and any other court. This is simply a case where the Secretary neglected to comply with unambiguous procedural rules applicable in the federal courts. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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June 27, 1991